**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

RSA No3564 of 2003

Date of decision : 29.10.2007

Farju and others

… Appellants

Versus

Phool Singh and others

…Respondents

Present : Mr.Lokesh Sinhal, Advocate for the appellants.

Mr. Sandeep Sharma, Advocate for the respondents.

**Vinod K.Sharma, J. (Oral)**

This Regular Second Appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiff-respondents for permanent injunction restraining the appellant-defendants from interfering in the peaceful possession of the plaintiff-respondents over the suit property, has been ordered to be decreed.

The plaintiff-respondents brought suit on the plea that they were owner in possession of the property in dispute and therefore, were entitled to injunction against the appellant-defendants from interfering in their peaceful possession. It was the case of the plaintiff-respondents that after the grant of injunction order, the appellant-defendants entered into the forcible possession of the plaintiff-respondents by raising the hut thereon. The onus on Issue No.2 was on the plaintiff-respondents as to whether the defendants have violated the order of the Court dated 12.7.1999. Learned trial Court though decided Issue No.2 against the plaintiff-respondents however, decreed the suit by holding that the plaintiffs-respondents were owners of the property after having been purchased from Harichand by way of registered sale deed Ex.PW-1/A; whereas, the stand taken by the

appellant-defendants that their possession over the suit land was very old, has been accepted by the learned trial Court. The reason for coming to the conclusion that the evidence led by the plaintiff-respondents was found to be most trustworthy by the learned trial Court. The defendant-appellants went in appeal before the learned Appellate Court, whereas the plaintiff-respondents filed cross-objections to challenge Issue No.2. Learned lower Appellate Court on the basis of evidence produced by the parties, came to the conclusion that the stand of the defendant-appellants was not correct as the construction raised on the suit property was new, as shown in the photographs.

In view of the evidence led by the appellant, learned Appellate Court reversed the finding on Issue No.2 while finding on all other issues were affirmed. Consequently, it was held that the plaintiff-respondents were forcibly dispossessed from the suit property after the grant of injunction by the learned trial Court. It was in view of the finding on Issue No.2, that the suit for possession was ordered to be decreed in favour of the plaintiff-respondents.

Learned counsel for the appellants contends that the judgment and decree passed by the learned Appellate Court cannot be sustained, as there was no plea seeking possession over the suit land and therefore, the suit was liable to be dismissed as it was proved on record that it was the defendant-appellants who were in possession of the property. The contention of learned counsel for the defendant-appellants further was that even the ownership of the plaintiff-respondents was not proved on record. In view of their proved possession, the suit property was liable to be dismissed being not competent. However, this plea of the learned counsel

for the appellant cannot be accepted as the finding on Issue No.2 stood reversed by the learned Appellate Court and it was proved on record that the defendant-appellants have forcibly dispossessed the plaintiff-respondents after the grant of injuction order during the pendecy of the appeal. Therefore, it was always open to the Appellate Court to modify the relief, as the event, which had taken place during pendency of appeal was hit by principle of lis pendens.

Accordingly, no error can be found in the impugned judgment passed by the learned Appellate Court. No.substantial question of law arises for consideration in this appeal.

Dismissed.

[**Vinod K.Sharma**]

**Judge**

29.10.2007

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